

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RHONDA HAGY,

Plaintiff,

v.

OPINION & ORDER

NANCY BERRYHILL,
Acting Commissioner, Social Security Administration,

17-cv-732-jdp

Defendant.

Plaintiff Rhonda Hagy sought review of a decision denying her application for Social Security benefits. The court remanded the case after the parties agreed that the administrative law judge erred in several ways. Now Hagy's counsel seeks an order directing the Commissioner to pay \$ 5,983.31 under 28 U.S.C. § 2412(d)(1), which allows a court to award "fees and other expenses" to a prevailing party in cases involving judicial review of an agency action.

The Commissioner does not oppose counsel's request for \$5,963 in fees, but it says that counsel is not entitled to \$20.31 for costs related to service on the ground that such costs are not authorized under 28 U.S.C. § 21412 or 28 U.S.C. § 1920. The Commissioner is correct as to §2412. Under § 2412(d)(2)(A), "fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees." It says nothing about service or postage.

But the court of appeals "has construed section 1920 to include amounts spent on . . . postage," *Tchemkou v. Mukasey*, 517 F.3d 506, 512 (7th Cir. 2008), which would include the cost of serving the Commissioner by certified mail. *See also Evans v. Tennessee Dep't of Corr.*, 514 F.2d 283, 284 (6th Cir. 1975) ("A party who has paid a filing fee and fees for service of process

in a civil case may include these items in his bill of costs.”). Accordingly, the court will grant Hagy’s motion in full.

ORDER

IT IS ORDERED that Rhonda Hagy’s motion for attorney fees and expenses under 28 U.S.C. § 2412 is GRANTED. Hagy is awarded \$5,983.31.

Entered July 11, 2018.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge